

TITLE/METHOD OF CITATION

The rules that follow are adopted as the Local Rules of Bankruptcy Procedure to govern the procedures of the United States Bankruptcy Court for the Middle District of Georgia until further order, and shall be cited as "M.D. Ga. LBR (Number - Extension)." Example: "M.D. Ga. LBR 1007-1."

PART I. COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

LBR 1005-1. PETITION - CAPTION

In addition to the requirements of FRBP 1005, the caption of a petition shall indicate the chapter in title 11 in which the petition is being filed. The initials of the bankruptcy judge assigned to the case will be added by the court upon filing.

LBR 1006-1. FEES - INSTALLMENT PAYMENTS

If an applicant for payment of fees in installments fails to specify proposed dates for installment payments, the court may direct that the filing fee be paid in full by the first date set for the meeting of creditors pursuant to § 341 of the Code. If a chapter 13 case is dismissed or converted before confirmation of a plan, any unpaid filing fee shall be paid by the trustee from any funds on hand in the case.

LBR 1007-1. LISTS, SCHEDULES, AND STATEMENTS

(a) **Number of Copies.** The number of copies of schedules and statement of financial affairs to be filed shall be the number of copies as prescribed in the Clerk's Instructions.

(b) **Alphabetical Listing of Creditors.** All creditors listed in Schedules D, E and F shall be arranged in alphabetical order.

(c) **Extension of Time.**

1. The court may, for cause shown, grant an ex parte motion for an extension of time for filing the schedules and statement of financial affairs required in Chapter 7, 11, 12 and 13 cases by FRBP 1007(b) to a date not less than five (5) days before the first date set for the Section 341(a) meeting. If the time for filing is

extended, the debtor shall serve a copy of the schedules and statement of financial affairs on the trustee not later than five(5) days before the first date set for the Section 341(a) meeting.

2. Any further extension shall be granted only in accordance with FRBP 9006(b) and upon motion served by the debtor on all parties in interest.

3. Any motion for extension of time shall be made before the expiration of the period of time prescribed for filing the schedules and statement of financial affairs.

(d) **Service of Plan Upon Creditors Added by Amendment.** If the debtor in a Chapter 13 case adds a creditor by amendment prior to the confirmation of the debtors' plan, the debtor shall immediately serve a copy of the proposed plan on the creditor.

NOTE: As amended September 1, 2000.

LBR 1007-2. MAILING - LIST OR MATRIX

(a) **Master Mailing List.**

1. **General Requirements.**

A. At the time of filing a voluntary petition or, in an involuntary petition, within 15 days following the entry of an order for relief, the debtor (or upon order of the court, petitioning creditor or partner) shall file a list of creditors which shall include in alphabetical order the name and last known mailing address for every scheduled creditor including individuals and entities co-obligated with the debtor on any debts.

B. The master mailing list, commonly referred to as the matrix of creditors, shall include the agencies and officers of the U.S. Government required to be served pursuant to FRBP 2002(j). Addresses for proper notice to major agencies of the U.S. Government can be obtained from the Clerk's Instructions.

C. If a federal tax debt is owed, all mailing lists shall include the address of the Internal

Revenue Service office having responsibility for monitoring the case. Addresses for proper notice to the Internal Revenue Service can be obtained from the Clerk's Instructions.

2. If the debtor is a partnership, the mailing list shall contain the name and current mailing address of each general and limited partner.

3. If the debtor is a corporation, the mailing list shall contain the names and current mailing addresses of the present officers and directors and, if known, the immediate past officers and directors.

4. The mailing list shall contain the name and last known address or place of business of each equity security holder, if applicable.

(b) **Form of Mailing List.** The master mailing list, commonly referred to as the matrix of creditors, shall conform to the requirements found in the Clerk's Instructions.

(c) **Debtor Certification.** The Master Mailing List shall be accompanied by a certification signed by the debtor attesting that the list contains all known creditors including any individuals and entities co-obligated with the debtor on any debts.

NOTE: As amended September 1, 2000.

LBR 1014-2. VENUE - CHANGE OF DIVISION

(a) **Cases Filed In Improper Division.** Any petition filed in an improper division may be transferred by the clerk to the proper division without notice or hearing.

(b) **Cases Filed In Proper Division.** Any debtor proposing to have a case handled in a division that would not be the proper venue as defined in LBR 1071-1 may file a motion requesting a change of divisional venue. The motion shall be served pursuant to LBR 9004-1 and LBR 9007-1. The motion for change of divisional venue shall be filed contemporaneously with the commencement of the case.

LBR 1015-1. JOINT ADMINISTRATION/CONSOLIDATION

(a) **Husband and Wife.** The estates of married debtors who file a joint petition shall be jointly administered without further order of the court.

(b) **Separate Administration in A Joint Case.**

1. **Separation of Estates.** A joint petition which was filed and jointly administered pursuant to LBR 1015-1(a) may be separately administered upon motion by a debtor, trustee, other parties in interest or on the court's own initiative. Notice of the separation of the estates will be given to all parties in interest and will specify any additional case numbers to be used to reference the separate estates. If a debtor, trustee, or other party in interest wishes to separate the estates, the motion shall be filed pursuant to LBR 9007-1.

2. **Fees Due Upon Separation of a Joint Case.** When a joint case is ordered to be administered separately based upon a request by the debtor, a fee will be charged equal to one half the current filing fee for the chapter in which the joint case was commenced. All other orders separating cases otherwise jointly administered will not result in the assessment of an additional filing fee.

3. **Amended Schedules and Modified Plans Upon Separation of a Joint Case.** When a joint case is ordered to be administered separately, the debtors shall file amended schedules reflecting the financial status of the separate estates within 15 days following entry of the order. If the case is filed in Chapter 11, 12, or 13, separate modified plans must also be filed within the 15 days following entry of the order. Plans must specify which estate will be responsible for each secured debt.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 1015-2. RELATED CASES

A motion requesting joint administration of two or more pending bankruptcy cases must specify the following:

1. Name and case number of cases sought to be jointly administered;

2. The proposed style and case number of the jointly administered case;
3. Whether the case will be consolidated procedurally and/or substantively;
4. Any administrative or scheduling orders previously entered in the affected cases that may require modification and the proposed modification;
5. Any amendments to mailing lists in the affected cases for future noticing requirements.

LBR 1017-2. DISMISSAL OR SUSPENSION - CASE OR PROCEEDINGS

(a) Voluntary Dismissal of a Chapter 7 Case.

1. A motion for voluntary dismissal of a Chapter 7 case must be served pursuant to LBR 9004-1 and LBR 9007-1.
2. Prior to the voluntary dismissal of a Chapter 7 case, all administrative expenses must be paid.
3. If the Chapter 7 trustee does not consent in writing to the dismissal, the court will schedule a hearing.

(b) Voluntary Dismissal of a Chapter 12 or Chapter 13 Case Previously Converted from Chapter 7.

1. A motion by a debtor to dismiss a Chapter 12 or Chapter 13 case that was previously converted from Chapter 7 must specify the grounds for the motion.
2. A motion for voluntary dismissal of a Chapter 13 case previously converted from a Chapter 7 case must be served pursuant to LBR 9004-1 and LBR 9007-1.
3. If the Chapter 7 trustee originally appointed in the Chapter 7 case and the Chapter 13 trustee do not consent in writing to the dismissal, the court will schedule a hearing.

(c) Trustee Fee Allowable Upon Dismissal. If a Chapter 13 case is dismissed prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the

court.

(d) Voluntary Dismissal of Chapter 11 Case.

1. A debtor's motion to dismiss a Chapter 11 case shall specify the grounds for the motion.

2. The debtor shall obtain a hearing date for the motion and serve the motion for voluntary dismissal, along with a notice of hearing pursuant to LBR 9004-1.

(e) Motion by Chapter 7 Trustee to Dismiss Case for Failure to Attend the Meeting of Creditors Held Pursuant to § 341 of the Code. A motion to dismiss a Chapter 7 case by the Chapter 7 trustee for failure of the debtor to appear at the meeting of creditors pursuant to § 341 of the Code shall be served on all entities required by FRBP 2002(a) and shall comply with LBR 9004-1 and LBR 9007-1.

(f) Effect of Dismissal on Related Adversary Proceedings. After dismissal of a bankruptcy case, any pending adversary proceedings will be dismissed by the court unless the court determines that it should retain jurisdiction.

LBR 1019-1. CONVERSION - PROCEDURE FOLLOWING

(a) Notice of Conversion. All conversions pursuant to §§ 1208(a) or 1307(a) of the Code, shall be in the form of a notice of conversion, filed by the debtor with the clerk of court. The notice shall include a certification that all parties in interest have been served. The effective date of conversion shall be the date the notice of conversion is filed.

(b) Trustee Fee Allowable Upon Conversion. If a Chapter 13 case is converted prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court.

(c) Motion to Convert. A debtor may convert a Chapter 7 case to a case under Chapter 11, 12, or 13, that has not previously been converted by filing of a motion accompanied by an appropriate order. If the case has been previously converted,

the debtor shall serve the motion and notice pursuant to LBR 9004-1 and LBR 9007-1.

(d) Duty of Trustee Upon Conversion. Upon conversion of a case from Chapter 13 or Chapter 7 to any other chapter in title 11, the trustee shall file an account of all receipts and disbursements made in the case and a report on the administration of the case pursuant to § 704(9) of the Code. The trustee is discharged from the case 30 days after the filing of the required reports.

(e) Disposal of Pending Motions to Dismiss Upon Conversion. All pending motions to dismiss filed by the trustee prior to the conversion of a case will be deemed terminated as moot.

(f) Duty to Amend. Upon conversion of a case, the debtor shall, within 15 days of the effective date of conversion, file inventories, schedules, and statements of financial affairs as may be applicable, or amend such items to include any interest in property acquired since the entry of the order for relief in the original chapter. The amendments shall account for any material additions, deletions, or other changes in the debtor's assets or liabilities. The amendments shall add to the mailing matrix any post-petition, pre-conversion creditors. If no amendments or additional inventories, schedules, or statements are necessary, the debtor shall file a certificate to that effect within the 15-day period.

(g) Duty to Attend Scheduled Meeting of Creditors Held Pursuant to § 341 of the Code.

The filing of a motion to convert a Chapter 7 case shall not relieve the debtor and debtor's counsel from attending the meeting of creditors scheduled in the Chapter 7 case unless the motion has been granted prior to the meeting of creditors.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 1071-1. DIVISIONS - BANKRUPTCY COURT

All bankruptcy petitions in the Middle District of Georgia shall be filed in the division in which the domicile, residence, principal place of business, or principal assets of the person or entity that is filing the case have been located for the greater portion of the prior 180 days; or in the division in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership. A listing of divisional boundaries

for the Middle District of Georgia can be found in the Clerk's Instructions.

PART II. OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

LBR 2002-1. NOTICE TO CREDITORS & OTHER PARTIES IN INTEREST

(a) **Noticing of 20-Day Matters.** The clerk of the Bankruptcy Court shall serve the notices required by FRBP 2002(a)(1) and 2002(a)(7). The party filing any motion or application shall serve any other notice required by FRBP 2002(a).

(b) **Noticing of 25-Day Matters.** The party filing any motion or application shall serve any notices required by FRBP 2002(b).

(c) **Other Notices.** The clerk of the Bankruptcy Court shall serve the notices required by FRBP 2002(e), 2002(f)(1), 2002(f)(2), 2002(f)(3), 2002(f)(4), 2002(f)(5), 2002(f)(6), 2002(o), 3002(c)(5), 3004, 4007(c), 4007(d), 7054(b), 8004, and 9022(a). The party filing any motion or application shall serve any other notice required by FRBP 2002 that is not otherwise specified in this or other sub-parts of this rule.

(d) **Certificate of Service.** The party filing any motion or application who is required by this rule to serve notices shall, upon completion of the service required by this rule, file a certificate of service with the court.

(e) **Content of Notice.** All notices shall comply with the provisions of LBR 9004-1.

(f) **Matters Requiring Expedited Settings.** In all cases where a party files a pleading and seeks to expedite its consideration by the court, a separate motion for expedited hearing must be filed contemporaneously with the affected pleading, containing sufficient information on its face to permit the court to determine the necessity for expedited treatment. All motions to expedite shall be accompanied by a proposed order and a certification regarding request for emergency hearing. The certificate shall substantially comply with the form certificate found in the Clerk's Instructions.

(g) **Returned Notices.** Notices of the § 341(a) meeting of creditors, orders dismissing the case, and orders of discharge shall contain a return address for the attorney representing the debtor. If the debtor is pro se, the notices will be returned to the clerk of court. If a notice is returned to debtor's attorney as undelivered, the debtor's attorney shall

be responsible for determining the correct address for the addressee on each returned notice. The debtor's attorney shall re-serve the notice and certify such service by filing a certificate of service. At the time of the certification, the debtor's attorney shall also provide the clerk with any corrected address. If corrected addresses are unavailable, counsel for debtor shall inform the clerk in writing, and the clerk is then authorized to remove any such address from the mailing list. If the debtor is pro se, the clerk's office will attempt to resolve any undelivered notices. If unable to locate a corrected address for a returned notice, the clerk is authorized to remove any such address from the mailing list.

(h) Undeliverable Notices. If an insufficient creditor(s) address is provided to the Court, which cannot be mailed by the National Bankruptcy Noticing Center, debtor's attorney will be notified that the address is insufficient and the Notice of the Section 341(a) Meeting of Creditors for the particular creditor involved was undeliverable. The attorney shall immediately ascertain the correct address for such creditor(s) and serve the Notice of the Section 341(a) Meeting of Creditors at the correct address. The attorney shall file a Certification regarding service of such notices in a form specified in the Clerk's Instructions.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 2007.1-1. TRUSTEES AND EXAMINERS (CH. 11)

(a) Request for an Election. A request to convene a meeting of creditors to elect a trustee in a Chapter 11 reorganization case shall be filed with the court and shall be transmitted to the United States trustee in accordance with FRBP 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, the person appointed trustee pursuant to § 1104(d) of the Code shall serve as trustee.

(b) Manner of Election and Notice. An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in FRBP 2003(b)(3) and FRBP 2006. Notice of the meeting of creditors convened under § 1104(b) of the Code shall be given in the manner and within the time provided for notices under FRBP 2002(a). A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any other party entitled to solicit a proxy under FRBP 2006.

(c) Application for Approval of Appointment and Resolution of Disputes. If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the court, the United States trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under FRBP 2007.1(b), except that the application does not have to contain the names of parties in interest with whom the United States trustee has consulted. If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after the date of the creditor's meeting called under § 1104(b) of the Code, the person appointed by the United States trustee in accordance with § 1104(d) of the Code and approved in accordance with FRBP 2007.1(b) shall serve as trustee.

LBR 2014-1. EMPLOYMENT OF PROFESSIONALS

(a) By Whom Application Made. An application to approve the employment of a professional person shall be made and signed by the entity or court approved counsel for the entity seeking to employ that person; (e.g., trustee, debtor in possession, committee, etc.)

(b) Content of Application. An application to employ a professional person shall, in addition to the information required by FRBP 2014, also contain the following information:

1. The date of the filing of the petition and chapter in which the petition was filed;
2. The mailing address and telephone number of the professional person to be employed;
3. The name(s) of any other professionals in the same profession employed pursuant to court order by the same applicant and, if there is any overlap in proposed services, an explanation of why additional professionals are needed and how duplication of service will be avoided;
4. A description of any compensation or promise of compensation, or of any security or pledge given to the professional. The term "general retainer" is not a suitable description;

5. The statements required by FRBP 2014(a) and 2016(b) shall be attached to the application.

(c) Nunc Pro Tunc Application.

1. If an application for approval of employment of a professional person is made within 15 days after the filing of the case or within 15 days of commencement of the professional's services, it shall be deemed contemporaneous.

2. If an application for approval of the employment of a professional person is made more than 15 days after the filing of the case or more than 15 days after commencement of the professional's services, and the application requests that the approval be nunc pro tunc, the following information shall be required:

(A) An explanation of why the application was not filed earlier;

(B) An explanation of why the order authorizing employment is required nunc pro tunc;

(C) An explanation, to the best of the applicant's knowledge, how the approval of the application will or will not prejudice any parties in interest.

3. Applications to approve the employment of professional persons nunc pro tunc shall be approved only on notice and opportunity for hearing. All parties in interest in the case must be served with notice of the application. The notice shall substantially comply with the provisions of LBR 9004-1 and 9007-1.

(d) Professionals Employed Without an Application.

Professionals who are deemed full-time employees of the debtor at the time of the order for relief are not required to be appointed by order of the court. However, any material change in employment terms or conditions occurring after the filing of the petition shall be disclosed by way of a notice served pursuant to LBR 9004-1 and LBR 9007-1. A debtor in possession or trustee of an operating business may also apply for an order waiving the provisions of this rule as to professionals of a type who are regularly employed in the ordinary course of debtor's business and who are to provide services not directly related to the reorganization proceedings; (e.g., collection agents or attorneys, accountants, geologists, appraisers,

realtors, eviction attorneys, etc.) Any such application shall be served pursuant to LBR 9004-1 and LBR 9007-1.

LBR 2015-3. TRUSTEES - REPORTS AND DISPOSITION OF RECORDS

A trustee or custodian in possession of books and records of the debtor may destroy, abandon, store or return to the debtor all or any portion of those books and records upon motion and notice served pursuant to LBR 9004-1 and LBR 9007-1. Such notice shall include a description of the books and records.

LBR 2016-1. COMPENSATION OF PROFESSIONALS

Upon dismissal or conversion of a Chapter 13 case before confirmation of the debtor's plan, and prior to the trustee refunding any funds on hand to the debtor, the trustee shall disburse the funds on hand in the following priority:

1. The trustee shall pay any outstanding filing fee owed to the court.
2. The trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court.
3. (A) The trustee is authorized to pay from the remaining funds on hand an attorney fee of \$400, less any fee paid as disclosed in the FRBP 2016 disclosure, to the attorney for the debtor, without any further motion, application, or order of this court.

(B) If the trustee has cause to believe the amount of \$400 is inappropriate, the trustee shall file a request with the court to reduce the amount to be paid pursuant to this Rule.

(C) If the attorney for the debtor requests a fee in excess of \$400, the attorney shall file an attorney fee application.

LBR 2091-1. ATTORNEYS - WITHDRAWALS

No attorney or law firm, having filed a petition or other pleading on behalf of a debtor or having made an appearance for a creditor in a contested matter or adversary proceeding, shall thereafter abandon the case or adversary proceeding in which the appearance was made, or withdraw as counsel for any party therein, except by order of court obtained after giving notice pursuant to LBR 9004-1 and 9007-1.

PART III. CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

LBR 3001-1. CLAIMS AND EQUITY SECURITY INTERESTS - GENERAL

(a) **Interest in Proofs of Claim.** All claims filed shall conform with § 502 of the Code and with the applicable Federal Rules of Bankruptcy Procedure, and may not include any claim for unmatured interest. Any creditor who calculates interest by using the "add on interest" method shall rebate interest from its claim by using the pro rata method.

(b) **Service of Copies of Claims.** Every creditor filing a proof of claim in a Chapter 12 case shall file the original proof of claim with the court and shall serve a duplicate of the claim with all attachments on the Chapter 12 trustee.

(c) **Extension of Time to File.** Upon the filing of an amendment adding a creditor to a bankruptcy case, that creditor will be allowed 60 days from the date of the filing of the amendment or by the original bar date set for the filing of claims, whichever occurs last, to file a proof of claim.

(d) **Bar Date for Filing Claims in Chapter 11 Reorganization Cases.** For all bankruptcy petitions filed in Chapter 11 of the Code, the bar date for filing of proofs of claim or interest shall be 90 days from the first scheduled meeting of creditors. For cause shown, the court will consider extending the time to file proofs of claim upon the filing of an appropriate motion or request within the 90-day period.

LBR 3007-1. CLAIMS - OBJECTIONS

(a) **Response Required.** Objections to claims shall be served pursuant to LBR 9004-1 and LBR 9007-1. A respondent shall have 30 days to file a written response. The United States or an officer or agent thereof shall respond not later than 35 days after service of the objection.

(b) **Proposed Order.** If the respondent to an objection to claim does not file a response within a time specified herein, the objecting party shall promptly file a proposed order adjusted to the facts alleged in the objection.

(c) **Notice of Hearing.** A respondent shall contact the Bankruptcy Court and obtain a hearing date and shall serve

notice of that hearing date at the same time as the response is served. If the respondent is pro se, the clerk will issue and serve notice of the hearing date to consider the objection and response.

(d) **Notice of Time to Object.** The objecting party shall inform the respondent of the requirements of this rule by serving an appropriate notice that complies with the requirements of LBR 9007-1.

LBR 3009-1. DIVIDENDS - CHAPTER 7

The United States trustee shall file with the court a copy of all proposed plans of disbursement in Chapter 7 asset cases.

LBR 3010-1. DIVIDENDS - SMALL

A trustee shall not be required to obtain prior permission in order to disburse any dividends to creditors in amounts less than specified under FRBP 3010.

LBR 3011-1. UNCLAIMED FUNDS

The disposition of unclaimed funds tendered to the court is governed by 28 U.S.C. § 2041 and § 2042. All unclaimed funds paid into the court shall be deposited into the court's registry account. The clerk of court is hereby authorized, without further order, to transfer funds from this account to the U.S. Treasury in accordance with the procedures and guidelines set out by the Administrative Office of the United States Courts for the handling of unclaimed funds. All other withdrawals of funds to be paid to claimants of those funds shall be by separate order of the court.

LBR 3012-1. VALUATION OF COLLATERAL

(a) **Chapter 13 Cases.** The value of collateral in all Chapter 13 cases will be determined at the confirmation hearing and will be incorporated into the court's order confirming the plan. The values set by the debtors in their Chapter 13 plans may be adopted by the court, unless a written objection is filed by the holder of the secured claim, and evidence concerning value is presented by the holder of the claim at the confirmation hearing. Any allegation of value contained in a proof of claim filed by a creditor will not be deemed an objection to debtor's valuation.

(b) **Chapter 12 Cases.** The value of collateral in all Chapter 12 cases will be determined prior to the hearing on confirmation of the Chapter 12 plan. The values set by the debtors in their Chapter 12 plans may be adopted by the court, unless a written objection is filed by the holder of the secured claim. If an objection is filed, a hearing will be scheduled with notice to all parties in interest. At the hearing, the objecting party must present evidence concerning value. Any allegation of value contained in a proof of claim filed by a creditor will not be deemed an objection to debtor's valuation.

(c) **Expert Witnesses.** In all actions involving valuation of property by an expert witness, five (5) working days prior to the time of the hearing or trial, the party wishing to introduce the testimony of an expert witness shall file with the court and serve on all parties in interest a sworn written statement of the valuation of the property, qualifications of the appraiser, a copy of any written appraisal, and the method used in making the appraisal. The appraiser must give oral testimony at the time of a hearing or trial, but not testify on direct examination. The party wishing to introduce the valuation of property by an expert witness may, at the time of a hearing or trial, make a summary of the appraisal. The appraiser will then be sworn for the purposes of cross-examination by the adverse parties.

NOTE: As amended September 1, 2000.

LBR 3015-1. CHAPTER 13 - PLAN

(a) **Chapter 13 Plan Forms.** All Chapter 13 plans shall substantially conform to the plan form contained in the Clerk's Instructions.

(b) **Long-Term Debt Paid Through Plan.** All Chapter 13 plans shall provide that when a pre-petition arrearage exists for claims treated pursuant to § 1322(b)(5) of the Code as of the date of the bankruptcy filing and such arrearage is four (4) monthly payments or more under the terms of the applicable note or contract, the payments which come due after the filing of the bankruptcy shall be maintained during the plan and shall be paid by the Chapter 13 trustee unless otherwise ordered by the court. The Chapter 13 trustee is authorized to disburse to the holder of such claim the payment amounts under the applicable note or contract which come due after the filing of the bankruptcy but before the confirmation of the plan. The Chapter 13 trustee is authorized to collect the

percentage fee in effect at the time of the disbursement on all payments made pursuant to this rule. Such disbursements shall be made within a reasonable time after receipt of payment from the debtor unless otherwise ordered by the court. Such disbursements will be made to the creditor's address as listed in the debtor's schedules if no proof of claim has been filed by the creditor.

(c) **Length of Plan.** All Chapter 13 plans must provide for payments over a period of not less than 36 months unless the plan provides that the value of the property to be distributed under the plan on account of any claim is not less than the amount of such claim. Unless the court orders otherwise, if the dividend provided in the confirmed plan is less than 100% and is met before 36 monthly payments are made by the debtor to the Chapter 13 trustee, the debtor, in order to be eligible for a discharge under § 1328(a) of the Code, must continue to make payments until 36 monthly payments have been made or a 100% dividend is paid.

LBR 3015-2. CHAPTER 13 - MODIFICATIONS TO PLAN

A request to modify a plan pursuant to § 1329 of the Code shall be served by the proponent of the modification on the trustee and on all parties in interest affected by the modification pursuant to LBR 9004-1 and LBR 9007-1. For all post confirmation modifications the debtor shall prepare and file a budget of current income and expenses.

NOTE: As amended September 1, 2000.

LBR 3015-3. CHAPTER 13 - CONFIRMATIONS

All creditor objections to confirmation of a Chapter 13 plan shall comply with the following:

1. All creditor objections are to be filed and served 7 days prior to the first confirmation hearing held in the case unless a modification of plan has been filed prior to the confirmation hearing. If such modification is filed, the objection deadline shall be 20 days from the date of the modification.
2. FRBP 9006 shall be applicable in determining the timely filing of creditor objections.
3. The first confirmation hearing held in the case for the purposes of this rule is deemed to be the later of

the hearing date set by the court and contained in the notice of the meeting of creditors pursuant to § 341 of the Code or, in the event the meeting of creditors is adjourned, the confirmation date announced at the completed meeting of creditors.

4. All written objections to confirmation and any request to file an objection after the deadline set above shall be served on the debtor, counsel for the debtor, and the Chapter 13 trustee.

5. Since the hearing to consider confirmation of a plan has been noticed to all interested parties, any objections to confirmation of a plan will not need to contain a notice of hearing otherwise required by LBR 9007-1.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 3016-2. DISCLOSURE STATEMENT - GENERAL

Disclosure statements shall, to the extent applicable, be complete in one document including any attached exhibits and shall include the following information:

1. A short chronological history of the debtor's business and the material factors that led to the filing of a bankruptcy petition;
2. A description of the available assets, their value at the time the case was filed, their value at the time of filing the plan and the source of the valuations;
3. The anticipated future of the business;
4. The source of all information stated in the disclosure statement;
5. A disclaimer to the effect that the court's approval of the disclosure statement does not constitute an endorsement of any of the representations contained in either the disclosure statement of the plan, nor does it constitute an endorsement during the case;
6. The present condition of the debtor while in Chapter 11, including a summary of material changes to the assets and liabilities during the case;

7. The estimated return to creditors in a Chapter 7 liquidation;
8. The accounting method utilized to produce financial information and the name of the accountants (if any) responsible for such information;
9. The proposed future management of the debtor;
10. The Chapter 11 plan or a summary thereof;
11. The estimated administrative expenses, including attorneys' and accountants' fees and a summary of all fees allowed in the case through the date the plan was filed;
12. The collectible status of accounts receivable;
13. Financial information, data, valuations and projections relevant to the debtor's current and future operations;
14. Information relevant to the risks posed to creditors in the plan;
15. The actual or projected realizable value from recovery of preferential or otherwise voidable transfers;
16. Litigation likely to arise in a non-bankruptcy context;
17. Tax attributes of the debtor;
18. The relationship of the debtor with affiliates;
19. A summary of significant orders entered during the case.

LBR 3017-2. DISCLOSURE STATEMENT - SMALL BUSINESS CASE

(a) Election to be Considered a Small Business in a Chapter 11 Reorganization Case. In a Chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the court may fix, for cause.

(b) Approval of Disclosure Statement.

1. Conditional Approval. If the debtor is a small business and has made a timely election to be considered a small business in a Chapter 11 reorganization case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with FRBP 3016. On or before conditional approval of the disclosure statement, the court shall:

A. fix a time within which the holders of claims and interests may accept or reject the plan;

B. fix a time for filing objections to the disclosure statement;

C. fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

D. fix a date for the hearing on confirmation.

2. Application of Bankruptcy Rule 3017. If the disclosure statement is conditionally approved, FRBP 3017(a), (b), (c), and (e) shall not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying FRBP 3017(d).

3. Objections and Hearing on Final Approval. Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with FRBP 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

LBR 3018-1. BALLOTS - VOTING ON PLANS

For all confirmation hearings the plan proponent must prepare a written ballot summary in substantially the same form as contained in the Clerk's Instructions. At the confirmation hearing, the original ballot summary and one copy will be submitted to the court. At that time it will be marked as an exhibit for the plan proponent

NOTE: As amended September 1, 2000.

LBR 3022-1. FINAL REPORT/DECREE (CH. 11)

(a) Projected Dates for Completion of Substantial Consummation. Chapter 11 debtors shall file with the clerk within 15 days of the date of the entry of the order confirming the plan of reorganization, a report specifying the projected date for completion of substantial consummation as defined in § 1101(2) of the Code. The report shall describe the action that is to be taken to complete substantial consummation. If the projected date for completion of substantial consummation must be extended, the debtor shall file a supplemental report specifying the new projected date, the progress made toward consummation of the plan, the action remaining to be taken to complete substantial consummation, and the reasons for the delay.

(b) Application for Final Decree. Upon completion of substantial consummation as defined in § 1101(2) of the Code, the debtor shall comply with the procedures contained in the Clerk's Instructions, file a final report and final account in compliance with § 704(9) of the Code, file an application for final decree, and submit a proposed final decree.

LBR 3070-1. CHAPTER 13 - PAYMENTS

(a) Payroll Deductions. In every case filed in Chapter 13 of the Bankruptcy Code, the court may enter an order requiring any entity from whom the debtor receives income to pay as much of that income to the Chapter 13 trustee as is necessary to fund the plan.

(b) Suspension of Chapter 13 Plan Payments. The Chapter 13 trustee shall have the authority to grant to debtors reasonable moratoriums in Chapter 13 payments for a period not to exceed 60 days. This moratorium shall be granted without notice, but the grounds for the moratorium shall be noted in the trustee's records.

PART IV. THE DEBTOR: DUTIES AND BENEFITS

LBR 4001-1. AUTOMATIC STAY - RELIEF FROM

(a) **Contents of Motions for Relief from Stay.** Motion seeking relief from the automatic stay as to property of the estate must specify the relief requested and include the following:

1. A description of the security interest(s) claimed by the creditor in the subject property ("collateral").
2. The creditor's estimate of value of the collateral and the basis of that valuation.
3. A statement of the indebtedness claimed to be due and owing with an itemization showing principal and advances, accrued interest, attorney's fees, and costs.
4. A statement of the amount of any other secured claims against the property (if known), and whether any such claim is superior or inferior to the movant's claim.
5. If relief is sought pursuant to § 362(d)(1) of the Code for cause, including lack of adequate protection, a factual statement of the grounds for such relief.
6. Motions seeking relief under § 362(d) of the Code, shall comply with the requirements of LBR 9004-1(a)1 and shall include a notice of hearing pursuant to LBR 9004-1(c)6.
7. Relief from stay allowed pursuant to § 1301(d) can only be granted by order of the court.

(b) **Agreements Providing for Relief from the Automatic Stay or for the Provision of Adequate Protection.** All motions for approval of an agreement to provide adequate protection, for the modification or termination of the stay provided in § 362 of the Code, for the use of cash collateral, or for the approval of an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property shall be served on or consented to by the following entities:

1. In a Chapter 11 or a Chapter 9 case, any committee appointed under the United States Bankruptcy Code or the

authorized agent for the committee, or, if no committee has been appointed, the 20 largest unsecured creditors contained in the list filed pursuant to FRBP 1007(d), the trustee, any individuals or entities requesting notices pursuant to FRBP 2002(I), and any other individuals or entities that the court may direct.

2. In Chapters 7, 12 and 13, all agreements, as set out above, must be consented to by the trustee appointed in the case, unless the trustee has expressly abandoned the asset or indicated in writing that the trustee has no opposition to the motion. No further service on any other entity shall be required unless otherwise ordered by the court.

(c) Payment of Secured Claims after Motion for Relief is Granted or Collateral Surrendered. In a Chapter 13 case, after a motion for relief from stay has been granted, or after confirmation of a plan or a modified plan that provides for surrender of secured collateral, the Chapter 13 trustee is authorized, following written notice to any such creditor, to suspend payments on any claim filed by such creditor. Actual possession of the collateral by the creditor is not a prerequisite for the application of this rule. The creditor may reinstate its right to receive payment on the claim by notifying the Chapter 13 trustee in writing, with a copy to the court, that it believes it is entitled to payment under the plan, and the creditor furnishes an accounting of all proceeds, if any, received from the sale of the collateral.

(d) Ex Parte Relief from Stay to Obtain Possession of Certain Uninsured Collateral.

1. Except in Chapter 11 cases, if collateral securing a claim, including property which is the subject of a lease, is a motor vehicle, trailer, boat, or an airplane, and if there is a contractual obligation by the debtor to provide collision and comprehensive insurance and the same is not in effect, then the creditor may file with the Bankruptcy Court a motion for ex parte relief from the stay of pursuant to § 362(f) of the Code to obtain possession of the collateral or leased property.

2. The Bankruptcy Court may, in its discretion, apply this rule to a Chapter 11 case.

3. Any motion for ex parte relief from the stay under this rule shall be verified and shall:

A. Include the following:

(1) A description of the collateral or leased property;

(2) A statement of the amount of the claim and the basis on which the claim is secured;

(3) An affidavit setting forth the basis on which the moving party believes that the collateral or leased property is not insured with full comprehensive insurance;

(4) A statement that the moving party or its attorney has given or attempted to give oral notice to the debtor's attorney or the debtor, if the debtor is not represented, and to the case trustee, that the motion is being filed, and;

(5) A statement specifying the failure, if any, of the debtor to produce proof of insurance at the time of the meeting of creditors pursuant to § 341 of the Code as required by LBR 4070-1.

B. Be accompanied by a proposed order which shall provide that:

(1) The debtor or trustee is prohibited from using the collateral or leased property unless and until adequate evidence of full collision and comprehensive insurance is presented to the movant or movant's counsel;

(2) The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the movant or movant's counsel of the location of the collateral;

(3) The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the movant within 72 hours, unless within that

time the movant or movant's counsel is provided with adequate evidence of collision and comprehensive insurance or, the debtor or trustee requests a hearing concerning same;

(4) The movant is authorized to take physical possession of collateral or leased property required to be surrendered under this rule, and to hold same, at movant's risk, provided that the movant may not dispose of the collateral or leased property unless and until the automatic stay is modified, terminated or expires as a matter of law and provided that, if the debtor provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the movant must return the property to the debtor;

(5) The movant or movant's counsel shall serve copies of the motion and proposed order promptly on the debtor, the debtor's attorney, and the trustee, and shall provide telephonic notice to the debtor's attorney and, if the trustee is in actual physical possession of the property, to the trustee.

NOTE: As amended September 1, 2000.

LBR 4002-1. DEBTOR - DUTIES

(a) **Duty to Keep Address Current.** Whenever debtor's mailing address changes while a bankruptcy case is pending, the debtor shall notify the court, the trustee, and the debtor's attorney of record.

(b) **Duty to Maintain Books and Records.** Unless the trustee appointed by the court takes possession of books and records of an estate, it shall be the duty of the debtor to maintain, preserve and keep in safe storage all such books and records during the time the case is pending.

(c) **Duty to Produce Records.** Upon request and without order of the court, the debtor shall make his books and records available to the trustee. The records shall be produced within 15 days of the request and shall include the following types of records:

1. Books, records, and other documents reflecting title, encumbrances, the nature, extent, value and location of all assets;
2. All nonexempt instruments and a cashiers check or money order for all nonexempt cash and deposits;
3. A complete inventory of the assets of the estate unless that inventory is set forth in the schedules;
4. Copies of any inventories prepared by or for the debtor within the preceding 12 months;
5. The debtor's federal income tax returns for the 3-year period preceding the date of filing of the petition;
6. Bank statements, canceled checks, and deposit slips for the 12-month period prior to the date of the petition.

LBR 4003-1. EXEMPTIONS

(a) Schedule C. Schedule C shall contain the following:

1. A detailed list of all property or assets claimed as exempt by the debtor.
2. Each asset's value shall be stated in dollar amounts. If the value of any asset claimed to be exempt is not known, the debtor shall state the exemptible sum in dollars.
3. Exemptions will be limited to the dollar amount claimed as exempt even if the asset exempted is later discovered to have had a greater value than the amount listed in the schedules.
4. If exempting future proceeds of an unliquidated claim or of a cause of action, the debtor shall fully describe any such claim or cause of action.

(b) Notice of Amendment of Schedule C Exemptions and Deadline for Objections. If Schedule C is amended, notice to all parties in interest in the case shall be sent by the debtor; objections to the amended schedule shall be filed within 30 days from the date of service of such notice. The notice required by this rule shall

substantially comply with the requirements of LBR 9004-1 and LBR 9007-1.

LBR 4003-2. LIEN AVOIDANCE

Motions to avoid liens under § 522(f) of the Code shall be served with a notice to respond that complies with requirements of LBR 9004-1. The motion shall be served pursuant to LBR 9007-1. In chapter 13 cases, debtor(s) may propose to avoid liens in the chapter 13 plan. The plan must specify the creditors whose liens are affected by such provisions in the plan.

NOTE: As amended September 1, 2000.

LBR 4008-1. REAFFIRMATION

If a reaffirmation agreement is filed by a debtor who was not represented by an attorney, the court will set a hearing to determine if the agreement should be approved in accordance with § 524(c)(6) of the Code.

LBR 4070-1. INSURANCE

At the meeting of creditors scheduled pursuant to FRBP 2003, the debtor shall present proof of insurance or other adequate protection of all secured collateral that is property of the estate provided such insurance or other protection is required by the security agreement.

PART V. COURTS AND CLERKS

LBR 5003-1. CLERK - GENERAL/AUTHORITY

Exhibits and/or documentary evidence tendered in any contested matter or adversary proceeding may be deemed obsolete by the clerk upon termination of the contested matter or adversary proceeding and expiration of all time periods for appeal or rehearing. The clerk may destroy such exhibits and/or documents after giving all parties in interest in the contested matter or adversary proceeding 15 days notice of the clerk's intended action. Parties desiring to have any documentary evidence or exhibits returned must contact the court within the 15 days.

LBR 5005-2. FILING PAPERS - NUMBER OF COPIES

All documents with the exception of the petition and schedules required by FRBP 1007 shall be filed as a single original. No other additional copy should be tendered for filing. The original petition and the schedules shall be governed by LBR 1007-1.

LBR 5005-4. ELECTRONIC FILING

(a) **Receipt of Facsimile Filings.** Subject to requirements of this rule, a pleading, complaint, petition or other document to be filed with the court may be accepted as timely filed by transmission to the court through a facsimile machine. No facsimile pleading or document will be accepted or deemed filed without prior approval.

(b) **Approval of Facsimile.** The pleading, complaint, petition or other document to be filed must be authorized to be received for filing by a judge of this court, the clerk of the court, or by the clerk's designee. Such authorization must be obtained prior to the sending of the document and must be based on a showing of time critical need.

(c) **Procedure for Filing Facsimile Documents.** The facsimile copy sent to the court must include (1) a cover sheet that includes a brief statement of the time critical status of the pleading, complaint, petition or other document, (2) the reason the original cannot be filed timely and, (3) the identification of the court individual authorizing its receipt. This cover sheet will be filed with the pleading in the case file. The party sending the facsimile document is solely responsible for insuring that it is fully and accurately received. The docketing of the document will

reflect that it is a facsimile document, the name of the court employee who authorized the receipt of the document and the name of the attorney or other individual who sent the document.

(d) **Filing of Original Documents.** The original of the pleading, complaint, petition or other document submitted by facsimile must be filed with the court by mail, courier or other means with the assurance that the document(s) will be received by the court within 48 hours of the facsimile transmission.

(e) **Facsimile Filing Fee.** A fee for the acceptance of facsimile documents shall be paid to the clerk's office at the time of the filing of the original documents. The amount of the filing fee is available from the fee schedule in the Clerk's Instructions.

LBR 5080-1. FEES - GENERAL

(a) **Fee Schedules.** A list of fees payable to the clerk is available from the Clerk's Instructions.

(b) **Payment of Fees by Third Parties.** Attorneys who receive filing fees from debtors shall pay such funds over to the court at the time of the filing of the petition or, if the petition has already been filed, within ten (10) business days from the receipt of the payment from the debtor. Upon dismissal of a Chapter 13 case, the Chapter 13 trustee shall pay any unpaid filing fee from funds on hand at the time of the dismissal.

LBR 5081-1. FEES - FORM OF PAYMENT

All fees shall be paid in cash or by cashiers check, money order, or check on the account of an attorney of record. No personal check will be accepted.

PART VI. COLLECTION AND LIQUIDATION OF THE ESTATE

LBR 6004-1. SALE OF ESTATE PROPERTY

(a) **Notices.** Notices required by FRBP 6004 shall be prepared by the movant.

(b) **Content of Notice.** A notice shall, in addition to the requirements of FRBP 2002(c)(1) and LBR 9004-1, contain the name and address of the proposed buyer, if known, and estimated cost of the sale or lease, including commissions, auctioneers' fees, cost of document preparation and recordation, and other such expenses.

(c) **Chapter 12 and 13 Cases.** Before filing any motion for proposed use, sale or lease of property in a Chapter 12 or Chapter 13 case, the movant shall consult with the trustee and determine, if possible, whether the trustee will consent to the motion. Any such motion shall contain a recital to the effect that such consultation has taken place and, further, shall recite the trustee's position, if known to the movant.

(d) **Sales of Property Subject to Security Interest.** Any motion to sell property that is subject to one or more claims of security interest(s) shall set forth the identity of the creditor(s), the description of property subject to such claim(s), and the amount of such claim(s). Compliance with this rule shall not constitute waiver of the movant's right to object to the validity or priority of such liens.

LBR 6007-1. ABANDONMENT

(a) **Abandonment by Chapter 7 Trustee at Meeting of Creditors.**

1. At the meeting of creditors pursuant to § 341 of the Code, a trustee in a Chapter 7 case may announce the abandonment of all or any portion of scheduled property of the estate and/or sign an abandonment prepared and presented at the meeting of creditors by any party in interest.

2. An objection to such abandonment must be in writing, filed with the clerk, and served upon the trustee, debtor, debtor's attorney, and any known lien holders within 10 days after the meeting of creditors. If no

such objection is filed and served, the property shall be deemed abandoned without further notice or hearing.

3. If an objection is filed to a proposed abandonment by the trustee, the court shall set a hearing and give notice to all parties in interest.

(b) Other Abandonments.

1. A notice of intent to abandon (filed by the trustee or debtor) or motion to compel abandonment (filed by any other entity) must be filed with the clerk and served on all parties in interest in accordance with these rules. The notice shall substantially comply with the requirements of LBR 9004-1 and LBR 9007-1.

2. The motion or notice shall include a description of the property, state the reason the property should be abandoned, and state the estimated value of the property.

PART VII. ADVERSARY PROCEEDINGS

LBR 7001-1. ADVERSARY PROCEEDINGS - GENERAL

In the interest of expediting certain matters covered in Part VII of the Federal Rules of Bankruptcy Procedure, the court will consider a motion by a debtor in Chapter 13 of the Bankruptcy Code to recover an automobile or an item of consumer goods repossessed by a creditor as a contested matter in Part IX of the Federal Rules of Bankruptcy Procedure. Upon the request of any party in interest, any such motion will be deemed an adversary proceeding under Part VII of the Federal Rules of Bankruptcy Procedure.

NOTE: As amended September 1, 2000.

LBR 7005-2. FILING OF DISCOVERY MATERIALS

NOTE: As amended September 1, 2000, FRCP 5 shall control in bankruptcy matters.

LBR 7054-1. COSTS - TAXATION/PAYMENT

(a) **Generally.** The clerk shall tax costs as authorized by law. The request for taxation of costs by the prevailing party shall be made on a Bill of Costs form provided by the clerk. The Bill of Costs form shall be supplemented with citations of authority and copies of invoices and other supporting documentation. Opposing counsel will be given the opportunity to respond to the prevailing party's Bill of Costs.

(b) **Time for Filing.** A Bill of Costs must be filed by the prevailing party within 30 days from the entry of the judgment that awarded the costs. Opposing counsel shall have 20 days from the service of the Bill of Costs to file a response.

LBR 7056-1. SUMMARY JUDGMENT

(a) **Statement of Uncontested Facts.** Upon filing any motion for summary judgment pursuant to FRBP 7056, the movant shall file a separate, short, and concise statement of the uncontested facts as to which the movant contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support such contention.

(b) **Response to Statement of Uncontested Facts.** The party or parties opposing a motion for summary judgment shall file a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits that support such contentions. Any such response shall be filed and served within 20 days of service of movant's Statement of Uncontested Facts.

(c) **Facts Deemed Admitted.** All material facts set forth in the statement served by the moving party may be deemed admitted unless controverted by the statement required to be served by the opposing party or parties.

(d) **Failure to Comply.** Failure to comply with this rule by the moving party may result in denial of the motion.

PART VIII. APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

LBR 8007-2. TRANSMISSION OF RECORD - APPEAL

(a) **Transmittal of Skeletal Record**. Upon the failure of an appellant to properly file a designation of record and issues on appeal as required by FRBP 8006, the clerk shall prepare a skeletal record consisting of the order being appealed, the notice of appeal, and any documents filed after the notice of appeal that relate to the appeal.

(b) **Expedited Appeal**. Any party requesting expedited treatment of an appeal under these Rules shall file with the clerk of the Bankruptcy Court a request for expedited treatment that substantially conforms with the Clerk's Instructions.

LBR 8011-1. MOTION, RESPONSE, REPLY - APPEAL

Except for motions that may be filed directly with the District Court pursuant to FRBP 8005, until an appeal is docketed by the District Court, all pleadings shall be filed with the Bankruptcy Court Clerk.

PART IX. GENERAL PROVISIONS

LBR 9001-1. DEFINITIONS

- (1) "Bankruptcy Code" or "Code" means the United States Bankruptcy Code (Title 11 U.S.C.) as amended;
- (2) "Bankruptcy Court" or "court" means the United States Bankruptcy Court for the Middle District of Georgia;
- (3) "Bankruptcy Judge" or "judge" refers to a United States Bankruptcy Judge in a case or adversary proceeding referred to this Court;
- (4) "Clerk" means the clerk of the United States Bankruptcy Court for the Middle District of Georgia and the deputy clerks;
- (5) "Clerk's Instructions" means written instructions or forms prepared by the clerk's office that give procedural guidelines on specific topics. The instructions are available from the clerk's office;
- (6) "Court" see "Bankruptcy Court";
- (7) "FRBP" means the Federal Rules of Bankruptcy Procedure as adopted by the Supreme Court of the United States;
- (8) "F.R.Civ.P." means the Federal Rules of Civil Procedure;
- (9) "F.R.Evid." means Federal Rules of Evidence;
- (10) "Judge" see "Bankruptcy Judge";
- (11) "LBR" means the Local Bankruptcy Rules for the United States Bankruptcy Court, Middle District of Georgia as adopted by this court.
- (12) "Parties in interest" means such persons as may be required to be served pursuant to any order of the court, the Federal Rules of Bankruptcy Procedure, or Local Bankruptcy Rules, and any other persons or entities that might have an interest in the matter including but not limited to the debtor, debtor's counsel, and the trustee.

(13) "Trustee" means the case trustee serving in a case in Chapter 7, 11, 12, or 13 and includes the U.S. Trustee in Chapter 11 cases.

LBR 9004-1. PAPERS - REQUIREMENTS OF FORM

(a) Multiple Requests for Relief.

1. Motions for relief from stay may not be combined with other forms of relief, except those allowed by §§ 362 and 1205 of the Code. Motions for relief from stay allowed by § 1301 may be combined with motions pursuant to § 362.

2. Objections to confirmation of a Chapter 13 plan may not be combined with other requests for relief.

(b) Waiver of Requirements of § 362(e)

Any waiver of the 30-day requirement of § 362(e) of the Code by the movant shall be recited in the motion and, set out in the title of the motion.

(c) Notices - Form. All notices served shall substantially conform to the following directives:

1. Method of Service. Every notice shall be set out as a separate document from any associated pleading except that a certificate of service may be combined with the notice. The notice may be served separately. If served with associated pleading, the notice shall be the first page or pages of the service packet. However, the notice may be combined with a short pleading if both can be contained on a single page.

2. Designated Authority for a Notice. The notice shall contain language that identifies the authority of the sender for originating the notice by indicating whether the notice is being sent by direction of the court or pursuant to a Local Bankruptcy Rule, Federal Rule of Bankruptcy Procedure, or the Bankruptcy Code. The appropriate citation for any rule or code section shall be specified in the notice.

3. Identity of Sender and Court. The notice shall clearly identify the sender by name, address, and telephone number. The notice shall also set out the

name, mailing address, and phone number for the clerk's office.

4. Required Notice Caption. Each notice shall be captioned as it appears on any associated pleading or petition and shall substantially comply with the requirements of FRBP 9004(b).

5. Mandatory Language.

a. Notice of Motion or Objection Other Than Objections to Claims. Unless a hearing is specifically required for the matter being noticed, notice and an opportunity for hearing as contemplated by LBR 9007-1 may be accomplished by the inclusion of the following language presented conspicuously in the notice and fully capitalized:

 {Movant} HAS FILED PAPERS WITH THE COURT TO [relief sought in motion or objection].

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

IF YOU DO NOT WANT THE COURT TO [relief sought in motion or objection], OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE [motion] [objection], THEN YOU OR YOUR ATTORNEY MUST FILE WITH THE COURT A WRITTEN REQUEST FOR A HEARING ON OR BEFORE _____ [SEE (c)7 BELOW].

IF YOU MAIL YOUR REQUEST TO THE COURT FOR FILING, YOU MUST MAIL IT EARLY ENOUGH SO THE COURT WILL RECEIVE IT ON OR BEFORE THE DATE STATED ABOVE.

ANY REQUEST FOR A HEARING MUST ALSO BE MAILED TO THE MOVING PARTY AND UPON ALL OTHER PERSONS INDICATED ON THE CERTIFICATE OF SERVICE ATTACHED TO THIS PLEADING.

IF YOU OR YOUR ATTORNEY DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION OR OBJECTION AND MAY ENTER AN ORDER GRANTING THAT RELIEF.

b. Notice of Objections to Claims. The following language shall be presented conspicuously in the notice of objection to claims and fully capitalized:

{Objecting Party} HAS FILED AN OBJECTION TO YOUR CLAIM IN THIS BANKRUPTCY CASE.

YOUR CLAIM MAY BE REDUCED, MODIFIED OR ELIMINATED.
YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

IF YOU DO NOT WANT THE COURT TO ELIMINATE OR CHANGE YOUR CLAIM, THEN YOU OR YOUR ATTORNEY MUST FILE WITH THE COURT A WRITTEN RESPONSE TO THE OBJECTION ON OR BEFORE _____ [SEE (c)7 BELOW and LBR 3007-1]. YOU MUST CONTACT THE BANKRUPTCY COURT AND OBTAIN A HEARING DATE AND SERVE NOTICE OF THAT HEARING DATE AT THE SAME TIME AS THE RESPONSE IS SERVED. IF YOU ARE NOT REPRESENTED BY AN ATTORNEY, THE COURT WILL ISSUE AND SERVE NOTICE OF THE HEARING DATE TO CONSIDER THE OBJECTION AND RESPONSE.

IF YOU MAIL YOUR RESPONSE TO THE COURT FOR FILING, YOU MUST MAIL IT EARLY ENOUGH SO THE COURT WILL RECEIVE IT ON OR BEFORE THE DATE STATED ABOVE.

ANY RESPONSE MUST ALSO BE MAILED TO THE OBJECTING PARTY AND UPON ALL OTHER PERSONS INDICATED ON THE CERTIFICATE OF SERVICE ATTACHED TO THIS PLEADING.

IF YOU OR YOUR ATTORNEY DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE OBJECTION TO YOUR CLAIM.

6. Notice of Hearing. If a hearing is required to be held concerning any matter other than one provided for under LBR 9007-1(c), the notice of hearing shall be served with the motion on all interested parties and shall include the following language presented conspicuously in the notice:

{Movant} HAS FILED PAPERS WITH THE COURT TO [relief sought in motion].

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF

YOU HAVE ONE IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

IF YOU DO NOT WANT THE COURT TO [relief sought in motion], OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE [motion], THEN YOU AND/OR YOUR ATTORNEY MUST ATTEND THE HEARING SCHEDULED TO BE HELD ON (date) , (year) , AT a.m./p.m. IN COURTROOM , UNITED STATES BANKRUPTCY COURT, [INSERT HERE THE COURT'S STREET ADDRESS].

IF YOU OR YOUR ATTORNEY DO NOT TAKE THESE STEPS, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION AND MAY ENTER AN ORDER GRANTING THAT RELIEF.

7. Notice Period. The party preparing the notice shall insert the appropriate deadline for response that is applicable to the motion filed. Unless a rule specifies otherwise, the time allowed shall be 20 days from the date of the issuance of the notice.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 9004-2. CAPTIONS - PAPERS, GENERAL

(a) Chapter and Judge Assignment in Caption. In all pleadings, the caption must indicate the chapter of title 11 in which the case is filed including the initials of the judge assigned to the case.

(b) Relief Sought Stated in Caption. All pleadings shall, within their title, specifically designate the relief sought. Substantial variance between the title of a pleading and the relief sought in the body of the pleading may result in dismissal of the pleading or denial of the relief by the court. The designation of "motion" without further description is not sufficient.

LBR 9006-1. TIME PERIODS

All motions to reduce or enlarge a period of time pursuant to FRBP 9006 shall specifically state the grounds for the relief requested.

LBR 9007-1 NOTICE AND OPPORTUNITY FOR HEARING

(a) **Notice - Service.** Unless these rules specifically provide for the persons or entities to be served, when these rules require service of a motion pursuant to this rule, the movant must send a copy of the motion to all parties in interest.

(b) **Notice - Contents.** Any notice served pursuant to this rule shall comply with LBR 9004-1(c)(5).

(c) **Objections or Responses - Service and Hearings.** If an objection or response is filed pursuant to this rule, a hearing will be scheduled with notice to all parties in interest. The party filing the objection or response shall obtain a hearing date from the court, prepare and serve a notice of hearing. The notice of hearing provided for herein need only state that a hearing will be held and set out the location, hearing date, and time the hearing is scheduled to commence. Any objection or response shall be served on the movant not later than the date such objection or response is filed with the court.

(d) **Relief Granted.** If no objection is filed pursuant to this rule, the court may grant the relief requested without further notice or hearing.

NOTE: As amended September 1, 2000 and September 2, 2002.

LBR 9010-1. ATTORNEYS/NOTICE OF APPEARANCE

(a) Applications to appear pro hac vice shall be filed with the clerk's office for the division in which the case or adversary proceeding is pending or is to be filed. The application shall contain the following:

1. The attorney's name, law firm, office address, office telephone number, State Bar number, and name of client.
2. A list of the state and federal courts where the attorney has been previously admitted to practice and the date of each admission.
3. A statement that the attorney is in good standing in the courts listed in paragraph 2 above.

4. An acknowledgment that the attorney understands that the court will require knowledgeable compliance with the court's Local Rules.

(b) The court may require the applicant to provide to the court the name, address, and bar number of an attorney who is admitted to practice in the Middle District of Georgia and who has agreed to serve as local counsel.

(c) The applicant shall attach a proposed order to the application.

(d) An attorney who has been admitted to practice pursuant to the provisions of this rule shall promptly notify the court of any change in status of matters disclosed pursuant to this rule.

NOTE: As amended September 2, 2002.

LBR 9011-1. ATTORNEYS - DUTIES

(a) Attorney Leaves of Absence.

1. Attorneys practicing in the Bankruptcy Court for the Middle District of Georgia are expected to be available to personally represent the interests of their clients in matters before the court. Leaves of absence will not be granted by the court. If requested, the court will make reasonable efforts to accommodate an attorney's absence for personal or professional reasons provided compliance is shown.

2. All requests for leave accommodations will be by letter delivered to the clerk of this court. The request shall specify the inclusive dates covered and shall include a list of all cases involving counsel in which a hearing, meeting of creditors pursuant to § 341 of the Code, FRBP 2004 examination, or other discovery examination has been scheduled during the leave period and the name of the judge handling the matter. If the matter scheduled is contested, the name, address and telephone number of opposing counsel must also be disclosed. It is permissible to recruit substitute counsel to appear, provided substitute counsel is aware of the circumstances of the case and can adequately represent the client's interest in such hearing. If substitute counsel has been recruited, the request for

leave shall note the name, address, and telephone number of substitute counsel for each matter.

3. In the event substitute counsel is not available, counsel shall file a motion for continuance in each scheduled hearing and attach a copy of the motion as an exhibit to the leave request. Unless all parties consent to the granting of the motion for continuance, a hearing on any such motion must be scheduled before the beginning of the leave period, with adequate notice of the hearing to the trustee and other parties in interest involved in the contested matter and to other such parties as directed by the court.

4. Subject to the provisions of paragraph 5 below, if a notice scheduling a hearing during a period in which the attorney is absent is issued, the court will make reasonable efforts to advise opposing counsel and/or the trustee and reschedule the hearing.

5. In the event an emergency or urgent matter requires that a hearing be conducted during the period of the attorney's absence, the court retains discretion to schedule a hearing despite the absence. Accordingly, all requests for leave accommodations must be accompanied by a designation of another member of the bar of this court who has agreed to be available to respond to such an emergency.

6. Counsel must update the above disclosures immediately upon any change of circumstances that occurs after the date of counsel's request.

(b) Attorney Bar Number. Each attorney shall include the attorney's state bar number on all documents filed with the court. The state bar number shall be placed on the document in immediate proximity to the attorney's signature.

LBR 9011-2. PRO SE PARTIES

All entities other than individuals may appear and be heard before the court only through counsel admitted to practice in the court.

LBR 9013-1. MOTION PRACTICE

(a) **Proposed Order.** Any motion which may be granted without a hearing that is tendered to the clerk for filing shall be accompanied by a proposed order bearing a title which describes relief granted. If the motion requests alternative relief as allowed under LBR 9004-1(a), the order must dispose of all matters raised in the motion. If a hearing is held on the motion, the movant shall bring a proposed order to the hearing.

(b) **Citation of Authority.** All motions should indicate applicable code sections or FRBP which affect the granting or denial of the relief which is sought.

(c) **Notice of Motion.** All motions filed pursuant to this Rule shall be accompanied by a notice that substantially complies with the requirements of LBR 9004-1(b).

NOTE: As amended September 1, 2000.

LBR 9013-3. CERTIFICATE OF SERVICE - MOTIONS

In all motions, briefs and other papers filed with the court when notice to the parties in interest is required under the FRBP or the Bankruptcy Code, or in which the relief requested may adversely affect a party in interest, must contain a certification of service. The certificate of service shall indicate specifically the parties served (including their address), the method of service, and the date of service, and shall be signed by an attorney unless the party filing the certificate is pro se. Failure to include a certificate of service to proper parties or opposing counsel or to otherwise fail to comply with this rule may cause the court to deny the relief requested.

LBR 9014-1. CONTESTED MATTERS

(a) **Applicability to Contested Matters.** FRBP 7026 will not apply to contested matters unless, upon request by a party in interest, the court orders otherwise.

(b) **Evidentiary Hearings.** Evidentiary hearings will be held in contested matters at the first appearance of the contested matter before the court. If time does not allow for the hearing to be completed, it will be continued by the court to a date specially set for the purpose of completing the hearing.

NOTE: Added by amendment September 2, 2002.

LBR 9015-1. JURY TRIAL

(a) Authority for Bankruptcy Judges to Conduct Jury Trials.

Section 157 of Title 28 provides that if the right to a jury trial applies in an adversary proceeding before the United States Bankruptcy Court, it may be heard by a bankruptcy judge if specifically designated to do so by the District Court and if all the parties expressly consent to the jury trial being conducted by the bankruptcy judge. The United States District Court for the Middle District of Georgia, by order entered November 18, 1994, designated each of the bankruptcy judges of this court to conduct jury trials.

(b) Applicability of Certain Federal Rules of Civil Procedure.

Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and adversary proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with FRBP 5005.

(c) Consent to Have Trial Conducted by Bankruptcy Judge.

If the right to a jury trial applies and a timely demand has been filed under Rule 38(b) F.R.Civ.P., the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than 30 days after the conclusion of the initial pretrial conference.

LBR 9019-1. SETTLEMENTS AND AGREED ORDERS PURSUANT TO FRBP 9019

(a) Settlement. If all or part of an adversary proceeding has been compromised or settled, a motion to compromise shall be filed in the bankruptcy case, not in the adversary proceeding. The motion to compromise shall identify the adversary proceeding, in the body of the motion and not in the caption of the motion.

(b) Notice Required. Notices regarding motions to compromise a contested matter shall state the nature of the controversy and the terms of the compromise. The movant shall comply with LBR 9004-1 and LBR 9007-1. No notice is required with respect to settlements of actions arising under § 523(a) of the Code, unless directed otherwise by the court. The parties may move the court to waive notice in other matters when appropriate.

(c) Order Approving Compromise. An order approving a compromise or settlement shall be entered in the bankruptcy case and a separate disposition will be entered in the adversary proceeding.

NOTE: As amended September 1, 2000.

LBR 9029-1. LOCAL RULES - GENERAL

Scope and Effective Date of Rules. These rules supplement or, as permitted, modify the Federal Rules of Bankruptcy Procedure, effective March 1, 1998, as amended September 1, 2000 and shall be construed consistently with those rules to promote the just, efficient and economical determination of every action and proceeding. These rules shall govern all actions and proceedings pending or commenced after the effective date cited above.